IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11165 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHIMA LIMITED

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 11165 of 2002
MR DV PARIKH for Petitioner No. 1-2
MR ASIM J PANDYA for Respondent No. 1-4
MR J.M.Malkan, learned Standing Counsel

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 17/09/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The petitioner has challenged in this petition, the impugned order dated 17.10.02 Annexure `N' passed by the respondent no.4 on several grounds. One of them was that the respondent no.3 heard the petitioner in response to the show cause notice dated 06.08.2002 (Annexure I) in person whereas the impugned order Annexure `N' was passed by the respondent no.4. Therefore, the impugned order is in clear violation of principles of natural justice. Specific contention was raised by the petitioner in para 4 of this petition to that effect. But surprisingly, there is no specific denial to this averment in the reply affidavit filed by Shri J.M.Desai, Dy.Director General of Foreign Trade for the respondents.

#. Mr.D.V.Parikh, learned counsel appearing for the petitioner submitted that in this case on behalf of the petitioner, he himself appeared before Shri J.M.Desai, Dy.Director General of Foreign Trade-respondent no.3 whereas the impugned order at Annexure `N' was passed by respondent-4 Shri N.Ramanunni. When a solemn statement is made at the bar by a responsible officer of the Court Shri D.V.Parikh for the petitioner, then we have no reason to disbelieve the same, more particularly, when in this case, the petitioner has come with a specific plea in para 4 of the petition that respondent no.3-authority heard in response to the show cause notice whereas the impugned order was passed by the respondent no.4-authority. A reference deserves to be made to the case of Gullapalli Nageswara Rao and others V/s Andhra Pradesh State Road Transport Corporation and another reported in AIR 1959 SC 308. Thus, there is a clear violation of principles of natural justice in this case, while passing the impugned order at Annexure `N'. Therefore, the same is required to be quashed and set aside.

#. Before parting, we must also state that there is one more strong ground available to the petitioner in this petition namely that the impugned order at Annexure `N' dated 17.10.02 passed by the respondent no.4 is totally a non-speaking order inasmuch as the authority has not at all dealt with the submissions made by the petitioner in reply to the show cause notice in writing and at the time of oral hearing. Therefore, on this ground also, the impugned order at Annexure `N' was required to be quashed and set aside.

#. In view of the above discussion, this petition is

allowed and the impugned order at Annexure `N' passed by the respondent no.4 is hereby quashed and set aside and matter is remitted to the concerned authority to pass fresh order in response to the show cause notice at Annexure `N' after extending fresh personal hearing to the petitioner. Rule is made absolute accordingly. Ad-interim relief granted earlier stands vacated. No order as to costs.

(B.J.SHETHNA, J)

(SHARAD D DAVE, J)

srilatha